

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the matter of

Implementation of Section 302 of the  
Telecommunications Act of 1996

Open Video Systems

**CS Docket No. 96-46**

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**REPLY COMMENTS OF  
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The following reply comments are submitted by the Association of Local Television Stations, Inc. ("ALTV"), in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>1</sup>

The telephone companies urge a minimum of regulatory gloss on the statutory provisions governing open video systems.<sup>2</sup> They suggest that the statute is clear and that various dispute

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<sup>1</sup>FCC 96-99 (released March 11, 1996)[hereinafter cited as *Notice*]. ALTV is a non-profit, incorporated association of broadcast television stations unaffiliated with the ABC, CBS, or NBC television networks. Local stations among ALTV's members include not only traditional independent stations, but also local television stations affiliated with the three emerging networks, Fox, UPN, and WB. As used herein, the term "local television stations" includes ALTV member stations, but excludes affiliates of ABC, CBS, and NBC.

<sup>2</sup>*See, e.g.*, Comments of the United States Telephone Association, CS Docket No. 96-46 (filed April 1, 1996) at 4 -8 , 9 [hereinafter cited as "USTA"].


resolution mechanisms are sufficient to address issues as they arise.<sup>3</sup> They also seize on the uncertainty about network architectures and service arrangements.<sup>4</sup>

The Commission already and quite rightly has refused to embrace such an absolutely minimalist approach. Instead, the Commission has raised a number of issues which it wisely seeks to address in this proceeding. ALTV agrees with the Commission that some issues may and ought to be resolved now. This is particularly true in the case of rules governing the retransmission of broadcast signals by open video systems or their affiliated and nonaffiliated video program providers. Not only the Act, but also an established body of Commission rules and decisions governing cable television systems' use of broadcast signals must mould the open video system broadcast signal carriage rules. The Act's requirement of parity in regulation of open video systems and cable television systems permits no other approach. Moreover, if system architecture and service arrangements are still on the drawing board, then decisions now on how requirements will apply to open video system will permit open video system operators to incorporate design features and operational systems which permit easy and effective compliance with the rules. The Commission, therefore, ought to stay its course and resolve the many issues it has anticipated at the outset. ALTV urges in particular that the following issues be resolved before operation of any open video system is authorized by the Commission:

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<sup>3</sup>*Id.*

<sup>4</sup>*Id.* at 17. ALTV must note that if anyone has a clue about ovs architecture or service arrangements, the LECs certainly must. Thus, their attempt to hide behind uncertainty might strike one as curious.



- **Legal responsibility for compliance with the various rules governing retransmission of broadcast signals must fall directly and solely on the open video system operator.<sup>5</sup>**

ALTV has posited that the open video system operator be responsible for compliance.<sup>6</sup> Some parties would shift and /or disperse responsibility to video program providers or so-called channel administrators.<sup>7</sup> This would add unnecessary burdens and confusion to what is a routine and typically simple process in the case of cable systems. Stations would be faced with dealing with multiple entities on the same system. Finding out with whom one should be dealing often is more troublesome and time-consuming than actually securing compliance with the rule. Open video system operators would have to assume greater responsibilities for notifying stations of their arrangements with video program providers and directing their complaints or requests to the proper entity. Furthermore, only the open video system will have ready access to all the information necessary to assure compliance. Thus, proposals to shift or share responsibility only add complication and should be rejected.

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<sup>5</sup>Operational responsibility, of course, may be delegated, but the Commission and broadcast stations affected by the rules should be required to look to only one entity for compliance.

<sup>6</sup>Comments of the Association of Local Television Stations, Inc., CS Docket No. 96-46 (filed April 1, 1996) at 17 [hereinafter cited as "ALTV"]; *see also* Comments of the National Basketball Association, CS Docket No. 96-46 (filed April 1, 1996) at 2 [hereinafter cited as "NBA"].

<sup>7</sup>USTA at 19; Comments of the National Cable Television Association, CS Docket No. 96-46 (filed April 1, 1996) at 36 [hereinafter cited as "NCTA"]; Comments of MFS Communications Company, Inc., CS Docket No. 96-46 (filed April 1, 1996) at 22 [hereinafter cited as "MFS"].

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- **Broadcast television signals should be carried on a distinct tier or similar package distributed to all subscribers to the open video system itself.**

ALTV in its comments urged that open video system be required to carry all broadcast television stations on a distinct tier or package.<sup>8</sup> Furthermore, this tier or package must be available to all open video system subscribers. Other parties have taken a similar position -- and for good and substantial reasons.<sup>9</sup> This would facilitate ready accessibility of broadcast signals to all subscribers and preserve parity with cable television systems.<sup>10</sup> Finally, such simple tiering or packaging doubtfully would encounter any significant technical hurdle.

- **Default channel positioning and reservation of attractive channel positions for open video system or open video system-affiliated program services should be prohibited.**

ALTV has supported channel positioning requirements designed to reflect the cable television channel positioning requirements.<sup>11</sup> Others have offered similar proposals.<sup>12</sup> ALTV also supports proposals to prohibit default channel positioning which displays an open video system or open video system-affiliated program channel or service every time the subscriber's receiver is

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<sup>8</sup>ALTV at 6. ALTV also concurs with the position that both must carry and retransmission consent signals should be treated the same in calculating the cap on capacity used by an open video system or its affiliates. ABC at 8.

<sup>9</sup>*See, e.g.*, NCTA at 32; Comments of the Association of America's Public Television Stations, CS Docket No. 96-46 (filed April 1, 1996) at 17 [hereinafter cited as "AAPTS"]; Comments of the National Broadcasting Company, Inc., CS Docket No. 96-46 (filed April 1, 1996) at 7 [hereinafter cited as "NBC"]; Comments of Capital Cities/ABC, Inc., CS Docket No. 96-46 (filed April 1, 1996) at 6 [hereinafter cited as "ABC"]; Comments of the National Association of Broadcasters, CS Docket No. 96-46 (filed April 1, 1996) at 13 [hereinafter cited as "NAB"].

<sup>10</sup>NBC at 7.

<sup>11</sup>ALTV at 7. ALTV's proposal included a cable-clone provision which permits stations to elect open video system carriage on the same channel upon which it is carried on most cable systems. *Id.*

<sup>12</sup>AAPTS at 21.

turned on. No rule against discrimination could countenance such a blatant bias in program selection. Similarly, the reservation of low numbered or other attractive channel positions to open video system or open video system affiliated program services would offend any concept of fairness or nondiscrimination.<sup>13</sup> The Commission hardly need sit back and wait for an open video system to act in such an obviously discriminatory fashion, entertain a complaint, and then take up to 180 days to resolve it. These anticompetitive practices should be labelled as such and prohibited outright via the rules to be adopted in this proceeding.

- **Preferential rates for broadcast stations should not be considered unjustly or unreasonably discriminatory.**

The National Cable Television Association argues that “open video system operators should not be permitted to charge different rates for the same transmission service” and goes on to state that “it may be necessary to adopt a rule under which an open video system operator is required to offer transmission service at the same per channel rate to all customers.”<sup>14</sup> Such an absolutist view of the anti-discrimination provision is unwarranted. Whereas ALTV in no way seeks to countenance any form of anticompetitive discrimination, concepts of neither justice nor reason would be offended by preferential rates for broadcast television stations.

Free broadcast television service is a vital and irreplaceable part of the nation’s telecommunications infrastructure. It remains the only free, universally available video service. It also remains far-and-away the most popular and beneficial consumer video service. This is far more than a matter of consumer tastes and fancies. As a matter of long-standing public policy, the preservation of broadcast television service has been and must remain a key element in any

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<sup>13</sup>NBC at 11.

<sup>14</sup>Comments and Petition for Reconsideration of the National Cable Television Association, CS Docket No. 96-46 (filed April 1, 1996) at 19[hereinafter cited as “NCTA”].

regulatory framework of analysis for new and emerging telecommunications technologies.<sup>15</sup> Preferential rates would do no more than recognize the overarching public interest in maintenance of the only universally-available, free medium of mass communications in this country

The availability of special advantageous tariffs for broadcast signal retransmission would go far to maintain the incentive and ability of broadcast licensees to provide programming responsive to community needs and interests and pertinent to community issues. First, costs to stations of maintaining access to their audiences would be lowered. Second, the incentive to remain a broadcast licensee would be greater. If the LECs do implement universal video transport to the home, then a local program provider would have less incentive to maintain over-the-air transmission facilities. By lowering the cost of wire transmission for broadcast station retransmission, licensees would have another reason to remain licensees rather than return their licenses to the Commission and escape statutory obligations to provide public service programming. Only by preserving the viability and vitality of broadcast television--a universal, free

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<sup>15</sup>The Supreme Court of the United States in *Turner Broadcasting System v. FCC*, \_\_\_ U.S. \_\_\_, 129 L. Ed. 2d 497, 114 S. Ct. 2445 (1994) recently articulated this public policy in no uncertain terms:

In the Communications Act of 1934, Congress created a system of free broadcast service and directed that communications facilities be licensed across the country in a "fair, efficient, and equitable" manner. Communications Act of 1934, §307(b) 48 Stat. 1083, 47 U.S.C. §307(b). Congress designed this system of allocation to afford each community of appreciable size an over-the-air source of information and outlet for exchange on matters of local concern. *United States v. Southwestern Cable Co.*, 392 U.S. 157, 173-174 (1978); Wollenberg, *The FCC as Arbiter of "The Public Interest, Convenience, and Necessity,"* in *A Legislative History of the Communications Act of 1934* pp. 61, 62-70 (M. Paglin ed. 1989). As we recognized in *Southwestern Cable*, *supra*, the importance of local broadcasting outlets "can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation's population." *Id.* at 177. The interest in maintaining the local broadcasting structure does not evaporate simply because cable has come upon the scene. Although cable and other technologies have ushered in alternatives to broadcast television, nearly 40 percent of American households still rely on broadcast stations as their exclusive source of television programming. And as we said in *Capital Cities Cable v. Crisp*, "protecting noncable households from loss of regular television broadcasting service due to competition from cable systems" is an important federal interest. 467

service--can the interests of the have-nots in retaining access to at least the current level of locally-responsive and quality entertainment program service be protected.

- **Signal carriage complaints should be treated just such complaints against cable systems, subject to the 180 day limit on Commission resolution of disputes.**

USTA asks the Commission to adopt minimal due process requirements to govern disputes under the Act and to permit parties to resolve disputes privately.<sup>16</sup> ALTV maintains its position that with respect to broadcast signal carriage issues, complaint and resolution procedures applicable to cable also should apply to open video systems, subject to the 180-day limit on dispute resolution.<sup>17</sup> No need exists for a new set of procedures; they already exist and may be imported directly into the Commission's open video system rules.


As to private resolution, it virtually goes without saying that disputes always may be resolved by the directly affected parties. However, several dangers do exist. First, the parties may be expected to protect their own interests, but not necessarily the public interest. Second, private negotiations can be used as a tactic to delay resolution. To prevent such misuse of a private negotiation strategy, the Commission should start the 180-day clock on dispute resolution ticking when discussions between the parties begin. To assure strict compliance with the provisions of the Act, the Commission also should require parties to notify the Commission that a dispute exists and allow only a limited time for the negotiations to conclude.<sup>18</sup>

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<sup>16</sup>USTA at 12.

<sup>17</sup>ALTV at 10.

<sup>18</sup>Under §653(a)(2) of the Act, the 180 days begins to run when the Commission is made aware of the dispute.



Finally, ALTV shares NAB's view that the Commission should state that "broadcast stations and other parties remain entitled to seek both other remedies provided under the Communications Act and any other remedy provided by state or federal law."<sup>19</sup>

- **Cable systems should not be permitted to operate as open video systems.**

NCTA calls for permitting cable systems to operate open video systems when a cable system also provides local exchange service.<sup>20</sup> ALTV posits a more cautious approach. Facilities based competition will occur only where cable and open video systems remain in a competitive mode. Indeed, as observed by MFS, even permitting a cable operator to distribute programming over an open video system in its franchise area, poses considerable risks to competition.<sup>21</sup> When all is said and done, open video systems should be competitors to cable systems. Therefore, to permit cable entry into open video systems right now would place the Act's fundamental goal of spurring competition in jeopardy.

In conclusion, ALTV reiterates that the various cable broadcast signal carriage rules may be applied to open video systems in a straightforward manner. Any variations should come only upon compelling technical showings by open video system operators and should involve differences which in no way diminish the effectiveness of the rules *vis-a-vis* the fundamental goal of assuring the vitality of free broadcast service to the entire public.

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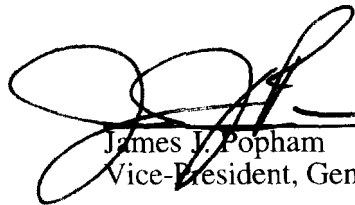
<sup>19</sup>See ALTV at 10, n. 15.

<sup>20</sup>NCTA at 28.

<sup>21</sup>MFS at 24-25.



Respectfully submitted,



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